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EUROPEAN COMMISSION

Brussels, 19-3-2010

C(2010)1615

COMMISSION DECISION

of 19-3-2010

**finding that remission of import duties is justified in a particular case
(REM 01/09)**

(Only the German text is authentic)

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(REM 01/09)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code¹, and in particular Article 239 thereof,

Whereas:

- (1) By letter of 15 July 2009, received by the Commission on 27 July 2009, Germany asked the Commission to decide whether the remission of import duties was justified under Article 239 of Regulation (EEC) No 2913/92 in the following circumstances.
- (2) Since 1990 a German firm, hereinafter "the firm", has been authorised to manufacture under the inward processing procedure aircraft parts of Combined Nomenclature (CN) codes 8803 10 10, 8803 10 90 and 8803 30 90 from various products, including bars and rods of titanium (CN code 8108 90 30) and of nickel (CN code 7505 12 00).
- (3) During a post-clearance audit in January 2008 it was found that, in addition to the authorised compensating products, the firm also manufactured turbojets parts for civilian aircraft, which fall under CN code 8411 9100 and which were delivered to well-known manufacturers of aircraft engines.
- (4) Compensating products of code 8411 91 00 were included in the firm's inward processing authorisation on 21 February 2008, with effect from 30 January 2007.

¹ OJ L 302, 19.10.1992, p. 1.

- (5) As the firm had not been authorised to manufacture compensating products of CN code 8411 91 00 under its inward processing authorisation before 30 January 2007, the German authorities considered that the processing operations had been carried out without authorisation.
- (6) The non-fulfilment of an obligation under the inward processing procedure gave rise to a customs debt under Article 204(1)(a) of Regulation (EEC) No 2913/92.
- (7) The authorities therefore asked the firm to pay the duties owed on the imports concerned that took place between 1 February 2005 and 29 January 2007, which amounted to EURXXXXX, the amount for which the firm has requested remission on the grounds of a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (8) In support of the request submitted by the competent German authorities the firm stated, in accordance with Article 905 of Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code², that it had seen the dossier which the German authorities had sent to the Commission and had nothing to add
- (9) In accordance with Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met to examine the case on 20 January 2009 within the framework of the Customs Code Committee - Customs Debt and Guarantees Section.

² OJ L 253, 11.10.1993, p. 1.

- (10) Under Article 239 of Regulation (EEC) No 2913/92, import duties may be remitted in situations other than those referred to in Articles 236, 237 and 238 of that Regulation if they result from circumstances in which no deception or obvious negligence can be attributed to the person concerned.
- (11) The Court of Justice of the European Communities has consistently taken the view that this provision represents a general principle of equity designed to cover a special situation in which an operator, which would not otherwise have incurred the costs associated with post-clearance entry in the accounts of customs duties, might find itself compared with other operators carrying out the same activity.
- (12) The file shows that the firm has an inward processing authorisation for many industrial products; it manufactured compensating products not covered by its authorisation using goods that had been placed under the inward processing procedure.
- (13) The firm mistakenly assumed that the turbojet parts should be classified under CN heading 8803 with the aircraft parts, which are also included in the authorisation as compensating products. It therefore failed to take account of Note 2(e) to Section XVII of the CN, which excludes machines and apparatus of headings 8401 to 8479 and their parts from classification in this section, which includes heading 8803.
- (14) It should first be noted that the firm treated the goods concerned in accordance with the inward processing procedure; they were always recorded in the documents for monitoring the procedure, just like the goods which were covered by the authorisation. They were therefore constantly under customs supervision.
- (15) Furthermore, the checks carried out by the competent customs services show that the firm met all the conditions stipulated in its inward processing authorisation regarding the treatment or use of the compensating products. The goods were indeed delivered to an aircraft manufacturer in the European Union; under Article 544(c) of Regulation (EEC) No 2454/93, this use is treated as equivalent to re-export. The fact that the goods were actually allocated to this use constitutes a situation covered by Article 239 of Regulation (EEC) No 2913/92.
- (16) Furthermore, the circumstances of this case did not adversely affect the European Communities' financial interests.

- (17) Lastly, if the firm had asked for the compensating products concerned to be included in its inward processing authorisation when it first applied for it, authorisation would have been granted, since in any event the conditions for such authorisation were fulfilled.
- (18) All these factors constitute a special situation under Article 239 of Regulation (EEC) No 2913/92.
- (19) The circumstances of the case do not suggest any deception or obvious negligence on the part of the firm, as the competent German authorities confirm.
- (20) The remission of import duties requested is therefore justified.
- (21) Where special circumstances warrant repayment or remission, Article 908 of Regulation (EEC) No 2454/93 authorises the Commission to determine the conditions under which the Member States may repay or remit duties in cases involving comparable issues of fact and law.
- (22) Cases comparable in fact and law to this one are repayment or remission requests lodged within the legal time limits in respect of imports into the Community under the inward processing procedure, where those import and inward processing operations were carried out in circumstances comparable in fact and law to those which gave rise to this case. There must have been no deception or obvious negligence on the part of the importers,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of EUR XXXXX requested by the Federal Republic of Germany on 15 July 2009 is justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 19-3-2010

For the Commission

Algirdas Šemeta

Member of the Commission